

FILE COPY

Office - Supreme Court, U. S.

FILED

APR 15 1947

CHARLES ELMORE CROPLEY  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1946

No. 1248

R. L. BRADFORD,  
*Petitioner,*

*v.*

UNITED STATES OF AMERICA.

---

---

**PETITION AND BRIEF FOR WRIT OF CERTIO-  
RARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT**

---

---

+ R. L. BRADFORD, *Petitioner,*  
*In propria persona,*  
11 West 42nd Street,  
New York 18, N. Y.



## INDEX

---

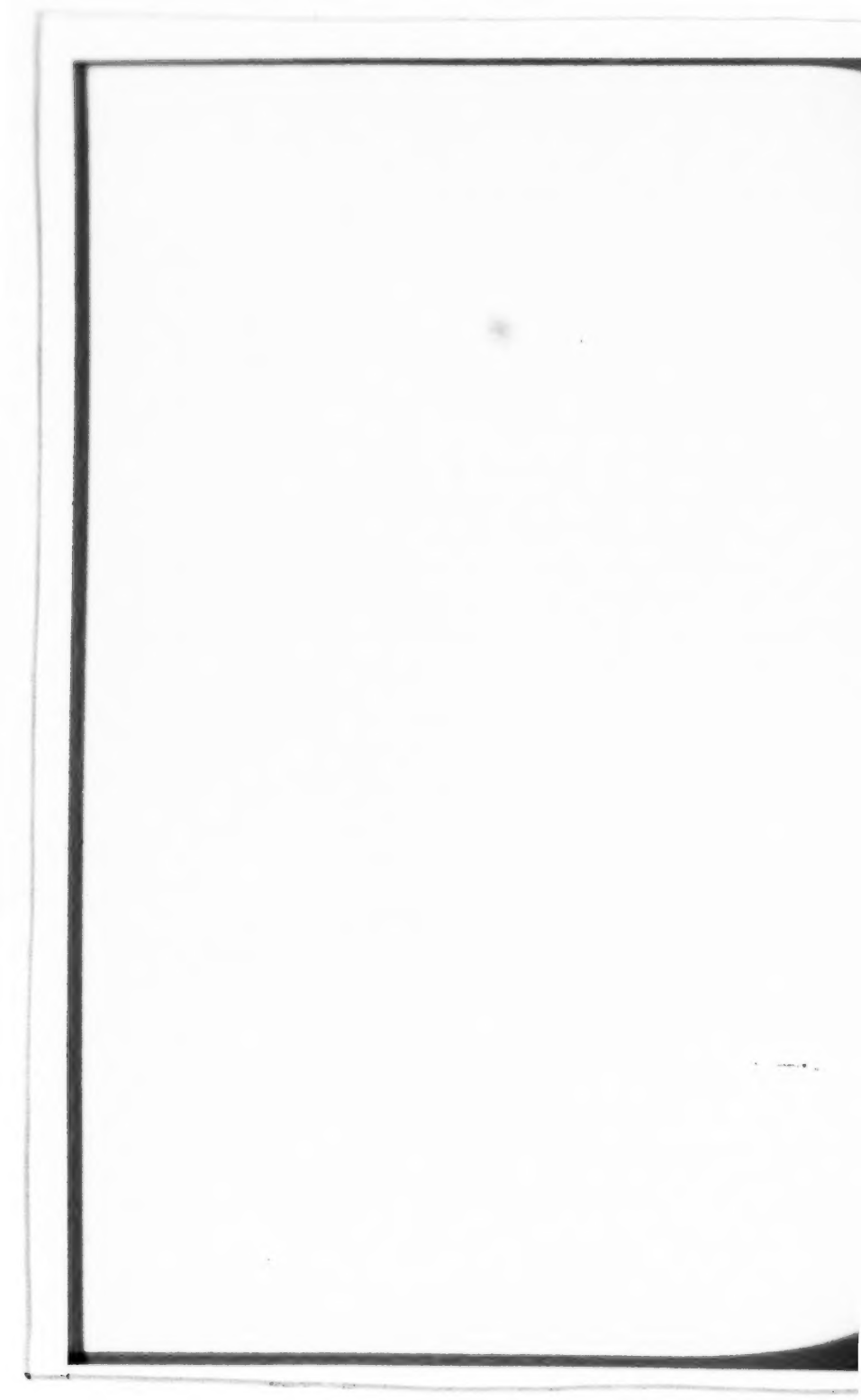
|   | PAGE |
|---|------|
| Petition for Writ of Certiorari .....             | 1    |
| Summary of Matter Involved .....                  | 1    |
| Opinion Below .....                               | 2    |
| Basis for Jurisdiction .....                      | 2    |
| Questions Presented .....                         | 2    |
| Supporting Brief .....                            | 3    |
| Argument (A) .....                                | 3    |
| Information (count 1) .....                       | 4    |
| Argument (B) .....                                | 6    |
| Errors to be Urged .....                          | 8    |
| Reasons Relied on for Allowance of the Writ ..... | 9    |
| Conclusion .....                                  | 10   |

### TABLE OF CASES

|   |   |
|---|---|
| Gregg Dyeing Co. <i>v.</i> Query, 286 U. S. 472 .....                       | 8 |
| Nectow <i>v.</i> Cambridge, 277 U. S. 183 .....                             | 8 |
| Pierce <i>v.</i> Soc. of Sisters, etc., 268 U. S. 510 .....                 | 7 |
| St. Louis I. M. & S. R. Co. <i>v.</i> Wynne, 224 U. S. 354....              | 8 |
| Shaffer <i>v.</i> Carter, 252 U. S. 37 .....                                | 8 |
| Twin City Pipe Line Co. <i>v.</i> Harding Glass Co., 283<br>U. S. 353 ..... | 7 |
| Tyson & Bro. <i>v.</i> Banton, 273 U. S. 418 .....                          | 7 |
| United States <i>v.</i> Fink, 69 F. Supp. 610 .....                         | 5 |
| Yick Wo <i>v.</i> Hopkins, 118 U. S. 356 .....                              | 8 |
| 16 C. J. S. p. 562 .....  | 7 |

### STATUTES

|   |   |
|---|---|
| Act of February 13, 1925 .....            | 2 |
| Act of March 8, 1934 .....                | 2 |
| Rule 38, Rules of the Supreme Court ..... | 2 |
| Priorities Regulation No. 3 .....         | 2 |



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1946

No.

---

R. L. BRADFORD,  
*Petitioner,*  
*v.*

UNITED STATES OF AMERICA.

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

Petitioner, R. L. BRADFORD, respectfully prays that a writ of certiorari issue to review the final decision of the United States Circuit Court of Appeals for the Second Circuit entered on March 18, 1947, affirming the judgment of the United States District Court of Connecticut.

**Summary of the Matter Involved**

On or about the 10th day of April, 1945, the assistant United States attorney for the District of Connecticut, filed an information in the United States District Court of said District, alleging in five counts that appellant obtained certain materials by extending preference ratings

in excess of the quantity necessary to satisfy the order for which said preference ratings were issued in purported violation of War Production Board Regulation No. 3.

On or about April 1, 1946, appellant pleaded *nolo contendere* and was thereafter, on April 22, 1946, sentenced by said court to pay a fine of \$100.00 on each of said counts.

### **Opinion Below**

The opinion of said Circuit Court has not yet been reported and will be found at pages 9 and 10 of the record.

### **Basis for Jurisdiction**

It is competent for this court to require by certiorari that the cause be certified to it for review pursuant to the Act of February 13, 1925, c. 229, Sec. 1; 43 Stat. 938 amending and re-enacting Section 240 (a) of the Judicial Code, 28 U.S.C.A., Sec. 347; Rule 38 of the Rules of this Court, and Act of March 8, 1934.

### **Questions Presented**

The questions presented are: (A) whether the acts charged in the information (Record, pp. 2a to 7a) constituted a violation of Priorities Regulation No. 3 (b) (2), as amended October 3, 1942; and (B) whether said Regulation as enforced and applied to the particular acts charged in said information infringe the due process of law clause of the fifth amendment to the Constitution of the United States and is void.

The reasons relied on for allowance of the writ are that the materials alleged to have been obtained by petitioner were not under restriction or control by any order or regulation of any federal agency and that any procedural regulation such as PR 3 relating exclusively to the use of preference ratings to obtain controlled materials could not have been violated; that said Regulation as enforced and applied is unconstitutional; and that therefore the penalty assessed in this instance deprived petitioner of his property without due process of law.

## **SUPPORTING BRIEF**

### **ARGUMENT (A)**

**The information charged no violation of the procedural regulation PR 3 because said regulation applied only to controlled materials and said charged materials were not controlled.**

Priorities Regulation No. 3, (b) (2) provided as follows:

“(b) (2)—“Preference ratings may be applied by a person to whom they are assigned only to the specific quantities and kinds of materials authorized, or to the minimum required amounts or material when no specific quantities are authorized. Ratings which have been applied or extended by others to deliveries to be made by a person may, subject to the provisions of this Regulation, be extended by such person in order to obtain not more than the same amount and kind of material (except as specified in paragraph (c) (2) of this Regulation) which he has delivered or is required to deliver pursuant to such ratings.”

Count 1 of said information alleges as follows:

"The said defendants, Echlin Manufacturing Company and Robert L. Bradford, on or about October 19, 1942, at New Haven, Connecticut, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly perform acts prohibited by War Production Board Priorities Regulation No. 3, issued by the War Production Board, an agency of the United States of America, which Priorities Regulation was issued pursuant to Section 2(a) of the Act of June 28, 1940 (54 Stat. 676), the National Defense Act, as amended by the Act of May 31, 1941 (55 Stat. 236), and by Title 3 of the Second War Powers Act 1942, Act of March 27, 1942 (56 Stat. 177); that is to say, the said defendants, Echlin Manufacturing Company and Robert L. Bradford, at the place and on the date aforesaid, did unlawfully, wilfully, and knowingly violate War Production Board Priorities Regulation No. 3 in that they, the said defendants, being engaged in the manufacturing business and subject to said War Production Board Priorities Regulation No. 3, did unlawfully obtain one hundred and thirty (130) 0.25 ohm variable resistors by extending preference ratings, said quantity being in excess of the quantity necessary to satisfy the order for which said preference ratings were issued, the obtaining of said materials by said extension of preference ratings being in violation of Paragraph (b) (2) of Priorities Regulation No. 3 as amended October 3, 1942, and in violation of the statutes in such case made and provided and against the peace and dignity of the United States."

The other four counts are identically worded, except as to dates, quantity and kind of materials:



|                            |                 |
|----------------------------|-----------------|
| Count 2, October 19, 1942, | 105 ammeters    |
| “ 3, December 17, 1943,    | 99# buna bands  |
| “ 4, January 14, 1944,     | 100# buna bands |
| “ 5, July 16, 1943,        | 90 ammeters     |

The information charged no offense because the resistors, ammeters and buna bands alleged to have been obtained by the extension of preference ratings were on said dates in abundant supply, were not critical materials, were not essential to the war effort, were not rationed, regulated, controlled or restricted by any order, rule or regulation of any government agency, and could have been freely purchased in any quantity without limit from any source of supply without the extension or application of any preference ratings whatsoever.

Therefore, Priority Regulation 3, a mere procedural regulation, which only applied to materials when brought under specific regulation or control such as Shellac, M-106, F.R. vol. 8, No. 70, page 4646, April 8, 1943 (b), could not have been violated by the purchase of the uncontrolled materials charged.

A recent case, *United States v. Fink*, D. C. Nebraska, 69 F. Supp. 610, December 16, 1946, is exactly in point.

There the government sought to enjoin the defendant from proceeding with the construction of a house in violation of the Veteran's Housing Program Order No. 1 of the C.P.A. The court held that since the materials purchased "had not been declared critical or placed upon some priority or allocation basis" the government had failed to make a case. There, as here, "All of the materials were purchased in the open market, and from established business concerns, at times when these materials were available for purchase by the general

public. None of the materials, when purchased by the defendant, were critical materials or then held subject to priority controls."

Thus, while elemental and obvious justice was freely granted by the District Court, the same justice upon the same essential facts was arbitrarily denied this petitioner by the Circuit Court.

### **ARGUMENT (B)**

**Priorities Regulation No. 3, as here enforced and applied, is unconstitutional and void.**

Priorities Regulation No. 3, and particularly section (b) (2) thereof, as enforced and applied to the inherently harmless and innocent acts charged in the five counts of the information, is an unreasonable, capricious and arbitrary exercise of police power without any real or substantial connection or relation between the assumed or purported purpose of said regulation and the facts of this case. Said regulation therefore violates the due process of law clause of the fifth amendment to the constitution of the United States, and is void, because it purports to punish appellant for the mere act of extending preference ratings to obtain resistors, etc., notwithstanding no law of the United States, nor any order, rule or regulation of any of its instrumentalities or agencies prohibited, restricted, limited, controlled or restrained in any manner whatsoever the purchase or sale of such material in *any* quantity.

Since these resistors, etc. could have been obtained without applying such rating because they were not scarce or critical materials, but were in abundant supply, the mere act of applying such rating was an idle, harmless, inherently innocent act, which served no purpose,

accomplished no result, worked no prejudice, and did not impede, obstruct or interfere with the war effort or divert this excess material from any needed or essential use or purpose.

As stated in 16 C. J. S. page 562, section 195:

“In order that a statute may be sustained as an exercise of the police power, the courts must be able to see that the enactment has for its object the prevention of some offense or manifest evil or the preservation of the public health, safety, morals, or general welfare, that there is some clear, real and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable and appropriate manner tend toward the accomplishment of the object for which the power is exercised.”

There can be no sense, excuse or reason whatever for penalizing the extension of ratings in this instance. It is wholly unreasonable and arbitrary. Rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state to effect.

*Pierce v. Soc. of Sisters, etc.*, 268 U. S. 510;

*Tyson & Bro. v. Banton*, 273 U. S. 418.

The appellant had an absolute right to contract for these resistors, etc., because they were not under priority control. Liberty to contract for a lawful purpose is a natural right. All persons are free to make whatever contracts they please so long as no fraud or deception is practiced and the contracts are legal in all respects.

*Twin City Pipe Line Co. v. Harding Glass Co.*,  
283 U. S. 353.

It would be ridiculous to assert that the extension of preference ratings to obtain abundant and therefore uncontrolled materials would undermine the health, safety, morals, convenience or general welfare of the public.

Admittedly, without the war emergency as an excuse, no government agency could, constitutionally, penalize the mere purchase of resistors, etc.—useful, innocuous and essential materials of commerce. Any materials therefore that were not controlled because of their abundance would retain their pre-war constitutional status.

A statute valid upon its face may yet be unconstitutional and invalid as construed, enforced and applied to the particular facts of the case.

*Yick Wo v. Hopkins*, 118 U. S. 356, 373;

*St. Louis I. M. & S. R. Co. v. Wynne*, 224 U. S. 354, 359;

*Shaffer v. Carter*, 252 U. S. 37, 55;

*Nectow v. Cambridge*, 277 U. S. 183, 185;

*Gregg Dyeing Co. v. Query*, 286 U. S. 472, 476.

### **Errors to be Urged**

The Circuit Court erred:

In not reversing the judgment of the District Court because:

(A) The information charged no offense against the laws of the United States; and

(B) Priority Regulation No. 3 (b) (2) as enforced and applied to the particular facts of this case infringed the due process of law clause of the fifth amendment to the constitution of the United States.

The Circuit Court erroneously decided an important question of law which has not been but should, for the protection of the public against similar unfounded, arbitrary and illegal prosecutions, be settled by this court.

The Circuit Court so far departed from the accepted and usual course of judicial proceedings according to recognized concepts of due process of law as to call for this Court's power of supervision.

### **Reasons Relied on for Allowance of the Writ**

All that petitioner did in this case was to purchase certain materials that were *not under priority control or regulation*, and which *did not require the use and extension of preference ratings*. Therefore, a mere procedural regulation relating *exclusively* to the application of preference ratings to obtain *controlled* materials was not and could not have been violated.

These materials were in the same category as thousands of other articles which were purchased freely and without penalty by the general public including the members of this Honorable Court in stores and other marts throughout the land.

The Circuit Court entirely ignored this plain and simple issue. Instead, it gratuitously devoted its opinion to the discussion of irrelevant matters not mentioned by this petitioner.

A candid examination of the record shows that there was no legal substance to this prosecution.

Why should opponents of arbitrary government recoil at the judicial iniquities of other lands and other ages, when a case, as flagrant in principle as any, is treated with connivance by the lower courts, and petitioner is forced to appeal to this Court for elemental justice?

Is this "a government of laws and not of men", or are these words mere pretense—a phantom bill of rights created and reiterated with no intention of enforcement whenever the occasion may arise?

## CONCLUSION

Since the Circuit Court ignored the issues here presented and actually failed to decide them; and since such issues are important, involving as they do, the matter of arbitrary punishment without authority of law for the mere act of purchasing uncontrolled materials in a free and open market; and since the federal constitution should be enforced and respected; it is therefore respectfully submitted that a writ of certiorari should issue from this Court to review the decision of the Circuit Court of Appeals for the Second Circuit.

R. L. BRADFORD, Petitioner,  
*In propria persona*,  
11 West 42nd Street,  
New York 18, N. Y.